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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/699,554	10/31/2000	Katsumi Nihei	Q61559	7384

7590 05/20/2005  
Sughrue Mion Zinn Macpeak & SEas  
2100 Pennsylvania Ave N W  
Washington, DC 20037-3202

EXAMINER

USTARIS, JOSEPH G

ART UNIT PAPER NUMBER

2616

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/699,554

Applicant(s)

NIHEI, KATSUMI

Examiner

Joseph G. Ustaris

Art Unit

2616

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: 5-8 and 14.
- Claim(s) rejected: 1-4 and 8-13.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please see attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

***Response to Arguments***

1. The amendments to claim 8 would have overcome the current rejection. The objection to claim 8 would have been withdrawn if the amendment was entered.

Applicant's arguments filed 26 April 2005 have been fully considered but they are not persuasive.

Applicant argues with respect to claims 1, 9, 11, and 12 that Zigmond fails to suggest assigning an evaluation value to the stored advertisements based on a reproduction time, a reproduction position, and a preference of a user and presenting the advertisements to the user in order of highest evaluation value. Applicant further extends these arguments to claims 4, 10, and 13. However, Zigmond does disclose selecting advertisements that meet the "selection standards" of what the viewer wishes to receive and view, i.e. the viewer wishes to receive advertisements that meet the viewer's local time or "reproduction time", the viewer's geographical location or "reproduction position", and the viewer's interests or "user preferences" (See column 10 lines 47-63 and column 12 lines 33-43), from the advertisement repository (See Fig. 5, element 86) where the advertisements are stored. The advertisements stored in the advertisement repository are "assigned an evaluation value" by the viewer, wherein the viewer prefers to receive and view the advertisements stored in the advertisement repository because they have more "value" to the viewer. Furthermore, the advertisements stored in the advertisement repository are presented to the viewer, wherein the advertisements within the advertisement repository have the "highest

evaluation” compared to the advertisements that didn’t get stored because they did not meet the viewers selection standards or has less “value” to the user.

Applicant further argues with respect to claim 13 that Zigmond in view of Seth-Smith fails to disclose a plurality of advertisement sections, each comprising the same plurality of sponsors advertisements, such that each sponsor advertisement is repeated in each of the plurality of advertisement sections. However, Zigmond discloses a “plurality of advertisement sections” (See Fig. 2a, group of ADS 20). Seth-Smith discloses a method for repeating transmissions of data packets. The combination of Zigmond in view of Seth-Smith allows the “advertisement sections” disclosed by Zigmond to be repeated. For example, Fig. 2a of Zigmond discloses an “advertisement section” (e.g. 20, 20, 20, 28). Seth-Smith suggests repeating the transmission of this “advertisement section” (e.g. 20, 20, 20, 28, 20, 20, 20, 28, ...). Therefore, Zigmond in view of Seth-Smith does meet the limitations of claim 13.

Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### **Conclusion**

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph G. Ustaris whose telephone number is 571-272-7383. The examiner can normally be reached on M-F 7:30-5PM; Alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Groody can be reached on 571-272-7950. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JGU  
May 10, 2005